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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Unbundling of Local) RM - 8614
Exchange Carrier Common)
Line Facilities)

**REPLY COMMENTS OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits its reply to the comments filed in response to the Petition for Rulemaking ("Petition") of MFS Communications, Inc. ("MFS"). As explained below, despite the strongly worded opposition of some parties to MFS's request that the Commission examine issues relating to the unbundling of the local loop, the *Petition* brings to attention a number of areas where Commission action is warranted: principally the development of rational access pricing and the promotion of a wholesale local exchange product marketplace.

I. INTRODUCTION

As might be expected, MFS's request that the Commission initiate a proceeding to unbundle the local loop generated a host of spirited responses. There appears to be a general consensus that increasing the opportunities for local competition is in the public interest. Much of the controversy is over the degree to which the Commission has jurisdiction to provide the relief that MFS seeks. Equally contentious is the question of whether unbundling is a necessary step for the realization of effective local

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exchange competition or whether some level of facilities-based local competition will develop on its own.

Regardless of how the Commission decides these issues, the record is clear that there are certain matters clearly within the FCC's jurisdiction that require attention if local competition is to yield its potential public interest benefits, namely the pricing of access to the local loop. Accordingly, whatever other steps the FCC takes in response to the MFS *Petition*, the agency should seize the opportunity to commence a rulemaking that reevaluates access charge pricing rules generally and removes the uneconomic incentives that are characteristic of access pricing today. As part of such rulemaking, the FCC must adopt policies and rules, appropriate to its jurisdiction, for the introduction of wholesale local exchange services market, an issue that is equally important as, and a necessary complement to, local loop unbundling.

II. THE DEVELOPMENT OF VIBRANT LOCAL COMPETITION IS NOT LIKELY TO BE A REALITY FOR THE FORESEEABLE FUTURE ABSENT LOCAL LOOP UNBUNDLING.

In its *Petition*, MFS explained that unbundling is essential if local competition is to develop because the alternative provision of the local loop is currently infeasible. Many of the commenters, joined CompTel in agreeing with MFS that the local loop remains "the quintessential bottleneck facility."¹ Other methods of reaching end users,

¹ See, e.g., Comments of AT&T Corp. at 5-6 (filed April 10, 1995); Comments of MCI Telecommunications Corporation at 2 (filed April 10, 1995); Comments of Allnet Communications Services, Inc., at 1-2 (filed April 10, 1995); Comments of FiberLink, Inc., at 1 (filed April 10, 1995); Comments of McLeod TeleManagement, Inc., at 3 (filed April 10, 1995).

such as via wireless communications or over coaxial cable networks, remain unproven and are available only on "a limited and largely experimental basis in the marketplace today."²

A number of the local exchange carriers ("LECs") filing comments attempted to contradict this reality, pointing to the purported potential for the introduction of local loop competition through the cable networks, wireless networks, and independently constructed fiber networks. While such services may be "on the horizon," that horizon is a long way off.³ Notably, the LECs point principally to press releases and newspaper articles for support of their contentions that the days of their monopolies are over.⁴ In contrast, CompTel and have pointed to the uneconomic pricing of interconnection and access charges that derives from the monopoly or near-monopoly provisioning of the local loop.⁵ Moreover, many of the parties that the LECs contend are poised to challenge them directly for local subscribers -- such as AT&T, Sprint,

² See, e.g., Comments of Teleport Communications Group, Inc., at 3 (filed April 10, 1995).

³ As Southwestern Bell explains, "the FCC should be concerned with *efficient competition*, not mere entry." Comments of Southwestern Bell Telephone Company at 22 (April 10, 1995). As NYNEX's comments make clear, the extent to which local service competitors ("LSCs") have replicated the local loop to date is focused upon highly profitable areas. Comments of NYNEX at 4-5 (filed April 10, 1995). There is no reason to assume, as NYNEX does, that the construction of such facilities will extend to less profitable areas.

⁴ See, e.g., Comments of BellSouth Telecommunications, Inc., at 6-9 (April 10, 1995); Comments of Bell Atlantic at 8-10 (filed April 10, 1995); Comments of Southwestern Bell Telephone Company at 16-19.

⁵ See, e.g., Comments of Cox Enterprises, Inc., at 4-5 (filed April 10, 1995) (incremental interconnection costs are only a small fraction of LEC interconnection prices).

and MCI -- have filed in support of MFS's *Petition*. Also quite telling is the fact that none of state regulatory bodies filing comments on the *Petition* contended that it is feasible for LSCs to provide their own local loop facilities to a significant proportion of local service subscribers.

Accordingly, in spite of the LECs' arguments to the contrary, the local loop will remain, as MFS stated, the quintessential bottleneck facility for the foreseeable future. In these circumstances, if local exchange competition is to take root, and yield its potential benefits to both end users and service providers that rely on access to the local exchange, unbundling is an absolute necessity.⁶

III. LOCAL LOOP UNBUNDLING IS NOT SUFFICIENT TO BRING ABOUT A VIBRANT LOCAL EXCHANGE MARKETPLACE

Without a doubt, unbundling of the local loop would remove substantial entry barriers to the provision of local exchange services. CompTel does not believe, however, that local loop unbundling alone is sufficient to yield the public interest benefits from competition described above.

By itself, local loop unbundling will open the local services market only to those entities that make investment in local switching facilities. In order to ensure the fullest

⁶ Even in those few areas where duplicate local loop facilities may be built, economic considerations will keep such replication to a minimum. Both LECs and facilities-based LSCs will have duopoly incentives for pricing and interconnection because of prevailing market dominance or the need rapidly to recover capital investment, respectively. Accordingly, retail service providers that need access to the end user's loop will still face a bottleneck and considerably above-cost access pricing. See CompTel Comments at 7-8.

development of local exchange competition, the Commission should implement the proposal of LDDS Communications and adopt policies and rules that will ensure that carriers that have not made the investment in local-switching will have available to them wholesale local exchange products that will enable them to enter the local market.⁷ The availability of such wholesale services will remove substantial barriers that will remain for entry into the local exchange marketplace even in the wake of local loop unbundling, much as the availability of wholesale interexchange products energized a nascent interexchange competition over a decade ago.⁸ Moreover, the existence of a local exchange wholesale products market will enable a larger number of firms to offer the public full-service products that combine both local and interexchange services. By adopting policies and rules to promote the availability of local exchange wholesale products, therefore, the Commission will thus ensure the fullest and most rapid introduction of local exchange competition and further competition in the long distance marketplace.

⁷ Comments of LDDS Communications, Inc., at 4 (filed April 10, 1995)

⁸ *See discussion id.* at 6-8.

IV. THE RECORD IS CLEAR THAT THE FCC MUST ADDRESS THE OVERPRICING OF ACCESS SERVICES

In its Comments, CompTel explained that, when addressing the issues raised by the MFS *Petition*, the Commission must not limit itself to the pricing issues expressly raised therein. Rather, the FCC must address the economic rationality, or lack thereof, of access pricing in a far broader context. As CompTel stated, it is "obvious that the magnitude of the incentives for local switching investment," such as that made by MFS, "is largely dictated by the overpricing of [certain] switched access rate elements."⁹ These elements include the carrier common line charge, the residual interconnection charge, and transport rates.¹⁰

A variety of commenters agreed that the MFS *Petition* presents both the opportunity and the need for the FCC to move the LECs toward more rational access pricing. Those calling for fundamental access charge reform include not only interexchange carriers,¹¹ but also LECs.¹² Indeed, Southwestern Bell took the position that fully distributed costs, upon which access charges are based under the Commission's Part 69 Rules, "have no theoretical foundation, are necessarily arbitrary and cannot be used in any meaningful way to establish prices, or set upper or lower

⁹ Comments of CompTel at 12.

¹⁰ *Id.* at 9-12 & n.6.

¹¹ *E.g.*, Comments of LDDS at 10-14; Comments of Sprint at 4; Comments of Allnet at (4); Comments of AT&T at 11.

¹² *E.g.*, Comments of Pacific Bell at 6-8 (April 10, 1995); Comments of USTA at 3 (April 10, 1995); Comments of NYNEX at 12-13, 16.

grounds for pricing."¹³ Rather, Southwestern Bell concludes, access pricing should be based on incremental costs.¹⁴ CompTel agrees. Accordingly, even if the Commission were to resolve the jurisdictional issues raised by the MFS *Petition* in favor of the States, significant access pricing issues would remain that require its attention if competition is to flourish not only in the local exchange but for long distance services as well.

The FCC should not, however, adopt the suggestion of some LECs and confer market pricing flexibility upon the LECs because the entry of new competitors may be on the horizon. As Southwestern Bell observes, the FCC should not confuse "efficient competition" with "mere entry."¹⁵ Moreover, as CompTel explained in its comments, even with the emergence of local loop competition through loop unbundling, with respect to each end user there will still be a bottleneck facility.¹⁶

Rather, because, for the vast majority of cases, the local loop will continue to be served by one, and only one, entity, access pricing rules must force charges for all access services closer to incremental costs and ensure that any remaining subsidy elements are fairly assigned. As LDDS explains, all interstate access services are

¹³ Comments of Southwestern Bell at 52-54.

¹⁴ *Id.* See also Comments of LDDS at 10-12 (access pricing should be based on incremental costs, with any demonstrated need for recovery of common costs to be accomplished on a nondiscriminatory basis from all access services).

¹⁵ Comments of Southwestern Bell at 22.

¹⁶ Comments of CompTel at 7-8.

wholesale inputs into retail products.¹⁷ The FCC's focus in regulating LEC (and LSC) services should explicitly take this into account. In the interstate arena, the maximum public benefit from local exchange competition will result only if interstate access prices support economic decisions by retailers in the purchase of wholesale access product inputs. Rational access pricing will allow a wholesale local exchange product market to develop, which as explained above, will permit a larger number of LSCs to emerge. Such pricing will also serve to remove the ability of the LECs to confer unearned advantages to certain competitors that purchase access services or, more importantly as the RBOCs may soon have the potential to enter the interLATA markets, upon themselves.

Accordingly, whatever action the Commission takes on the specific MFS proposals, it should commence a rulemaking designed to price access services on an incremental cost basis and recover common costs on a non-discriminatory basis. Similarly, if the Commission adopts pricing guidelines for the states for local loop unbundling, it should also develop complementary guidelines for the pricing of intrastate wholesale local exchange products.

¹⁷ Comments of LDDS at 11-12.

V. THE FCC SHOULD PROCEED TO ADOPT UNIFORM INTERCONNECTION STANDARDS

Finally, the FCC should move forward and adopt uniform interconnection standards. As CompTel stated in its initial comments, national standards for loop interconnection are appropriate because interconnection architectures do not raise market-specific or state-specific issues. Nothing in the comments, including those of NARUC and several state public service commissions, contradicts this. On the other hand, resolution of these technical issues on a national basis would not only facilitate the introduction of local competition and but help maintain a vibrant interexchange marketplace, provided that proper access pricing rules and regulatory protections are implemented, as CompTel outlined in its initial comments.¹⁸

VI. CONCLUSION

The Commission should take this opportunity to take those steps within its jurisdiction to promote the development of local exchange competition, and through those measures, the continued growth of interstate competition. Specifically, the Commission should commence a rulemaking to consider requiring local loop unbundling. This proceeding should also adopt a broadly applicable set of access pricing rules based upon incremental costs that recognizes the wholesale nature of access services and the need to recover any common costs on a competitively-neutral nondiscriminatory basis from all access services. In addition, the FCC should

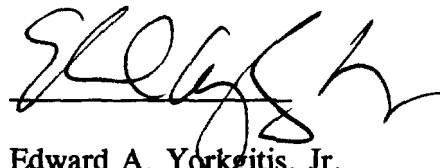
¹⁸ See Comments of CompTel at 15-18.

commence a separate rulemaking to move quickly toward uniform standards for interconnection with the local loop.

Respectfully submitted,

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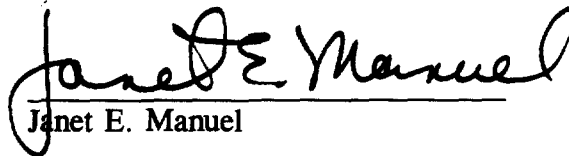
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